

**Remarks of Katie Tracy, Center for Progressive Reform
OSHA Whistleblower Stakeholder Meeting
May 12, 2020**

Good afternoon. My name is Katie Tracy. I'm a senior policy analyst at the Center for Progressive Reform where I lead our workers' rights program.

CPR is a DC-based nonprofit research and educational organization. We operate with a network of more than 60 Member Scholars around the U.S. who volunteer their expertise to help protect health, safety, and the environment through analysis and commentary.

OSHA's Whistleblower Protection Program is critical for ensuring workers have safe and healthy workplaces where they can raise concerns without fear of retaliation. However, unless OSHA adequately enforces the whistleblower protection laws, employers may continue to retaliate with minimal risk of penalty and employees will never fully trust in the protections those laws provide.

In the current context of the coronavirus pandemic, the underlying policy goals of the program are as important as ever. Essential workers on the frontlines are facing adverse consequences for asking questions, speaking up, and in some cases, even for bringing their own protective gear into the workplace. According to OSHA's data, the agency is receiving nearly two dozen COVID-related complaints of retaliation daily.

Although the Whistleblower Protection Program faces many obstacles, there are several ways that OSHA can improve its administration of the program for the near and long term, within its existing authority and without using significant additional resources. I've discussed several ideas in [written comments submitted to the docket](#), and will highlight a select few now.

Enhance Data Transparency and Track Cases

First, OSHA should provide comprehensive data on its administration of whistleblower cases on its website, create a portal for workers to access their case-related information, and utilize trends in whistleblower cases to bolster enforcement efforts.

As far as publishing more data, OSHA could start with the model it has created for real-time COVID-related data. This data is limited in numerous ways, but OSHA could seek to address those limitations as it builds out a comprehensive real-time tracker of its administration of all whistleblower cases under the nearly two dozen statutes in its jurisdiction.

In addition to providing more data, OSHA should create an online utility for workers to track their complaints through the process and access case related documents.

OSHA should also focus resources on tracking trends in whistleblower cases and utilize that data to bolster enforcement efforts. For example, if OSHA finds that an employer retaliated, the agency should refer the employer to the enforcement unit for a possible inspection, especially if the employer is a repeat offender.

Assess Which Statute Covers the Alleged Retaliation

Second, when OSHA receives a complaint, it should review it to assess which whistleblower statute applies and, if more than one could apply, the agency should investigate under each statute. OSHA's Whistleblower Training Manual already requires that OSHA make such a determination, and if more than one statute could apply, to process the complaint under each of the applicable statutes. OSHA should be sure that in every case, the investigators are following the manual and processing the complaints under each applicable statutes, as instructed.

Complete Investigations on Time

Third, when OSHA receives a complaint, it should ensure that it makes a determination on the complaint within the statutory period. While delayed investigations and dismissals let employers off the hook, poor administration of whistleblower cases has adverse consequences for both OSHA and the whistleblower. If an investigation cannot be completed promptly, the agency at minimum owes it to the whistleblower to communicate the reason for the delay and provide an updated period as to when the case will proceed.

Moving forward, OSHA will need to show its commitment to upholding whistleblower protections by moving cases through the system and showing the outcomes are fair and just. As a first step, OSHA should fill investigator vacancies and reestablish the Whistleblower Protection Advisory Committee disbanded in 2018.

Ensure Workers Have Information about Protections in Each Whistleblower Statute

Lastly, OSHA should ensure that all workers have information about their protections under each of the relevant whistleblower statutes.

In the immediate term, OSHA should target outreach to workers and employers on the frontlines of the coronavirus crisis. As the economy begins to reopen, OSHA should ensure that businesses across the nation understand that the risk COVID-19 poses to employees remains high and that they still have a legal duty to protect employees from exposure to this disease.

In the near- and longer-term, the agency should focus its outreach on the industries where retaliation is most likely to occur. In all cases, OSHA's outreach to workers should be in clear terms and in multiple languages so that all workers can understand their rights and how to exercise them.

Conclusion

I hope OSHA will consider these ideas as it moves forward. Thank you for hosting this meeting and providing an opportunity to share ideas.